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33072 7590 01/06/2010 KAGAN BINDER, PLLC SUITE 200, MAPLE ISLAND BUILDING 221 MAIN STREET NORTH STILLWATER, MN 55082				
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* CHARLES E. BOYER

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Appeal 2009-003189  
Application 10/713,247  
Technology Center 2800

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Decided: January 5, 2010

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Before JOHN C. MARTIN, MAHSHID D. SAADAT,  
and ROBERT E. NAPPI, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Final Rejection of claims 1, 4-8, and 16. Claims 2, 3, and 9-15 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

### STATEMENT OF THE CASE

Appellant's invention relates to a high security card in which data is presented in a two-dimensional binary information symbol, and a system for reading such a card (Spec. 4:2-5). Claim 1 is illustrative and reads as follows:

1. A high-security transaction card including account representation information for an entity, comprising:

at least one two-dimensional binary information symbol

comprising a symbolic representation of coded data including the account representation information for the entity and entity identification information and, said at least one symbol being located within said perimeter of said card body on said at least one face,

wherein the account representation information for the entity that is coded in the two-dimensional binary information symbol is not otherwise represented in human readable form on the card body so that account identification can only be made by decoding the two-dimensional binary information symbol and the entity identification information useable for comparing with a characteristic of the entity associated with the card.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Tahan	US 2002/0111830 A1	Aug. 15, 2002
Nishikado	US 6,572,025 B1	Jun. 3, 2003
Wankmueller	US 6,857,566 B2	Feb. 22, 2005
		(filed Nov. 25, 2002)

The rejections as presented by the Examiner are as follows:

Claims 1, 4, 8, and 16 stand rejected as obvious under 35 U.S.C. § 103(a) over Wankmueller and Nishikado.

Claims 5-7 stand rejected as obvious under 35 U.S.C. § 103(a) over Wankmueller, Nishikado, and Tahan.

We make reference to the Brief (filed Jan. 25, 2008 and supplemented Mar. 17, 2008), the Reply Brief (filed Aug. 29, 2008), and the Answer (mailed Jun. 26, 2008) for the respective positions of Appellant and the Examiner. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant did not make in the Briefs have not been considered and are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

## ISSUE

In rejecting claims 1, 4, 8, and 16, the Examiner reads the claimed elements of high-security card on Wankmueller and relies on Nishikado for teaching a two-dimensional binary information symbol shown as codes 306a-306d depicted in Figure 15 of Nishikado (Ans. 3-4). Appellant contends that Nishikado provides critical information on the card in human cognizable form, whereas the claims require that identification of such information can only be made by decoding the two-dimensional symbol (App. Br. 11-12). Appellant further argues that the symbols disclosed by Nishikado are parts of an exceptionally complex system and very different from the claimed invention because Nishikado stores the critical information in various pieces of a symbol that must be reassembled by a specialized reader (App. Br. 12). Regarding the rejection of claims 5-7, Appellant

presents the same arguments made for claims 1, 4, 8, and 16 (App. Br. 13-15).

Thus, Appellant's arguments present the following issue:

Has Appellant shown that the Examiner erred in finding that Nishikado discloses presenting critical information in the form of at least one two-dimensional binary information symbol and that combining Nishikado with Wankmueller would have resulted in the claimed invention.

### FINDINGS OF FACT

The following findings of fact (FF) are relevant to the issue involved in the appeal.

#### *Wankmueller*

1. As shown in Figure 1, Wankmueller discloses a payment card 10 having a bar code 20 thereon and a radio frequency ID chip or circuitry 30 included in the card. The bar code may be graphically printed, imprinted, or otherwise placed on the card. (Col. 3, ll. 29-35.)

2. Wankmueller discloses that the bar code is encoded with at least one or more digits of the payment account number (PAN). (Col. 3, ll. 35-36.)

#### *Nishikado*

3. Figure 12 of Nishikado illustrates an ID card 250 including a card substrate 256, card holder's picture, and a synthesized image placed in four different coded units 251a-251d. The four encoded image units 251a-251d of two-dimensional codes include specific coded data, such as address, name, date of birth, and telephone number of the card holder. (Col. 22, ll. 56-67.)

4. Figure 12 of Nishikado is shown below:

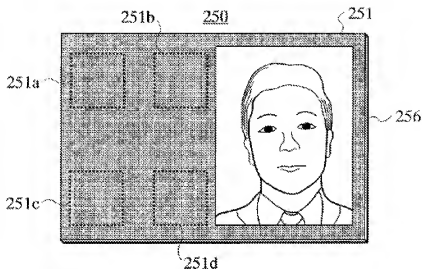


Figure 12 of Nishikado

5. Nishikado further discloses in Figure 15 a credit card 305 that is used by a user to purchase goods from a credit card member shop having an authentication terminal 302 shown in Figure 14. (Col. 24, ll. 4-33.)

6. Figure 15 of Nishikado is shown below:

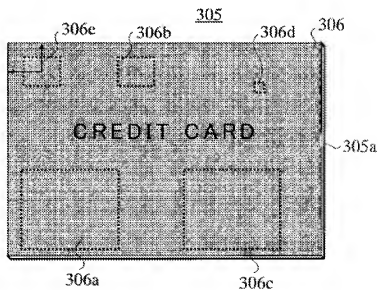


Figure 15 of Nishikado

7. The card 305 comprises a card substrate 305a and a code including an image 306 which is printed on the substrate. The code includes a first unit of identifying information of two-dimensional codes for identifying the owner of the card such as a password, and a second unit including coded identifying information such as the name, face picture, date of birth, or signature. (Col. 24, ll. 18-28.)

8. As shown in Figures 16A and 16B, Nishikado discloses that the two-dimensional bar codes 307 and 308 include the coded password of the owner and the owner's information hidden in the code. (Col. 24, ll. 28-33.)

#### PRINCIPLES OF LAW

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *See In re Kahn*, 441 F.3d 977, 987-88 (Fed. Cir. 2006); *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'

*KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007).

The *KSR* Court further recognized that "[w]hen there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp." *Id.* at 421. On the issue of obviousness, the Supreme Court has stated that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 416.

## ANALYSIS

Appellant's contentions focus on Nishikado's depiction of user's information in human cognizable form "with some, all, or more information represented in code form, such as a two-dimensional bar code" (App. Br. 11). We agree with the Examiner's findings (Ans. 6-7) that the description of Figure 15 specifically indicates that the information is encoded in two-dimensional barcode which is readable only by a specialized reader such as an authentication terminal (FF 5-8). Appellant's arguments appear to merely rely on Figure 12 of Nishikado that includes a picture of the card owner in addition to the coded user information on the card (FF 3-4). However, the embodiment shown in Figure 15 of Nishikado includes only encoded information regarding the user, such as the user's picture, name, and signature, as well as the account information, such as a password, which are not presented in human readable form (FF 6-8).

With respect to the alleged complexity of Nishikado's system and whether storing the encoded information in pieces makes it difficult to decode (App. Br. 12), we also agree with the Examiner (Ans. 7-8) that Nishikado's system, although more complex, still discloses presenting encoded information on an identification or credit card. In that regard, while Nishikado provides the encoded information in multiple units placed on different portions of the card face (FF 6), each portion includes user's information or the account information. We also note that the claims do not preclude additional symbols on the card because they recite "at least one two-dimensional binary information symbol."



Appellant's argument (Reply Br. 5) that no entity or user information is disclosed in Wankmueller is not responsive to the rationale of the rejection, which relies on Nishikado for such a teaching.

Appellant argues (*id.*) that since Wankmueller splits the account information between two different forms of machine readable information, one of ordinary skill in the art would not have modified Wankmueller with Nishikado to form the encoded information within a single barcode. This argument is unconvincing because claim 1 does not require that the account representation information be encoded in a single two-dimensional binary information symbol.

As stated by the Examiner (Ans. 7), the teachings of Nishikado provide an alternate method of encoding information which may be applied to Wankmueller in order to improve presentation of coded information. In fact, the teaching value of Wankmueller is not in the type of information encoded or the form of machine readable information, but in presenting account information in a form that is not human readable. As such, one of ordinary skill in the art would have considered improving Wankmueller by using the two-dimensional bar codes of Nishikado for encoding user's information along with the account information within regions of two-dimensional barcodes. In combining Wankmueller and Nishikado, a person of ordinary skill in the art would recognize that using the two-dimensional barcodes of Nishikado would have provided the predictable result of providing more encoded information on the card. *See KSR*, 550 U.S. at 421.

### CONCLUSION

For all of the above discussed reasons, we find that Appellant has not shown that the Examiner erred in finding that Nishikado discloses presenting

critical information in the form of at least one two-dimensional binary information symbol and that combining Nishikado with Wankmueller would have resulted in the claimed invention. Therefore, we sustain the 35 U.S.C. § 103 rejection of claims 1, 4, 8, and 18 over Wankmueller and Nishikado as well as the rejection of claims 5-7 over Wankmueller, Nishikado, and Tahan.

**ORDER**

The decision of the Examiner rejecting claims 1, 4-8, and 16 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

**AFFIRMED**

tkl

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